IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

MFA.No. 550 of 2000(C)

OPMV.1857/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR
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APPELLANT/CLAIM PETITIONER:

ELDHO PAUL,S/O.POULOSE,
EVVCHATTU HOUSE, KOTTAPPADY KARA,
KOTTAPPADY VILLAGE.

BY ADV. SRI.JIMMY JOHN VELLANIKARAN
SRI.V.O.JOHN
SRI.K.J.ANTONY

RESPONDENTS/RESPONDENTS:

1.NAZAR,S/O.UNNI,MALITHAN VEEDU,
PALLIPURAM KARA, MARAMPILLY VILLAGE.

2.K.K.KUNJIKUTTAN,VIRUTHIPARAMBIL HOUSE,
THURUTH, ALWAYE.

3.M/S.ORIENTAL INSURANCE CO. LTD.,T.NAGAR, COCHIN.

BY ADV. SRI.M.JACOB MURICKAN FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.550 OF 2000 ()

Dated this the 30th day of October, 2007

J U D G M E N T

KOSHY,J.

Appellant met with a serious motor accident while travelling in a bus bearing registration No.KCF 1881 due to rash and negligent driving of the bus by the 1st respondent as the bus hit against a compound wall and overturned. The 1st respondent is the driver of the bus insured by the 3rd respondent Insurance company. He claimed a compensation of Rs.11,24,000/-. But tribunal has awarded only Rs.1,17,300/-. Tribunal found that accident occurred due to the negligence of the 1st respondent driver. Only dispute is regarding the quantum of compensation.

2. With regard to the injuries, the appellant was taken to the Baselius Hospital, Kothamangalam and thereafter he was referred to Medical Mission Hospital, Kolencherry and then

taken to Medical College Hospital, Kottayam. He was inpatient for 219 days on different occasions. The treatment continued even though accident occurred on 29.8.1993. Treatment continued from 31.8.1997 till 17.9.1997 as it required physiotherapy. It is the contention of the petitioner that even now also treatment is going on because of malunion of fractures. Ext.P10 is the wound certificate. Petitioner suffered the following injuries:

1. Abrasion over the anterior aspect of the right thigh 6 x 4 c.

2. Lacerated wound 15 x 8 cm. (right leg) just below the patella.

3. Lacerated wound 7 x 4 cm., 2 inches below the right patella.

4. Lacerated wound 5 x 3 cm. with ends of tibia protruding.

5. Crushed left thigh.

6. Crushed right leg and calf muscles.

7. Compound communited open fracture lower $^{1}/_{3}^{rd}$ both bones right leg.

8. Compound communited fracture of the left leg femur.

9. Wound 8 cms. over the medial aspect of the left thigh.

10. Another wound 4 cms. over the anterior lateral aspect of left thigh.

11. Transverse wound of about 8 cms. long over the dorsal aspect of the left knee.

12. Transverse wound of 5 cm. over the dorsum of the left foot and abrasion over the dorsal aspect of the big toe.

Ext.A16 disability certificate shows that he suffered 35% disability and certificate also shows that there is malunion of fractures and there is unheeled wound and regular dressing and care is required as it has become an ulcer. Medical records shows that he has also suffered several operations. He had suffered crush injuries to both legs. The disability certificate reads as follows:

"This is to certify that I have examined Mr.Eldo Paul - 30 years this date. According to wound certificate from Kolencherry Hospital he had sustained open fracture. Both bones (Rt) leg and open fracture (L) femur. He was treated later MCH, KTM. There were multiple injuries also. He had undergone series of operations including illizoras ring fixation on the (Rt) leg of M.C.H, Kottayam. Now he has got the following finding and deformities.

Right leg

(1) Big ugly scars over the leg segment and uneven surface. Numbress over some areas.

(2) Chronie ulcer 3 x 2 cm on the lower 3rd of leg.

(3) Ankle movements almost absent.

(4) Flexion of (R) knee joint is possible only upto 85 - 90^0.

(5) X-ray (R) leg shows, malunion of the fractures, c posterior angulation and ostroperosis and evidence.

(6) 1 cm shortening of the leg segment.

Left leg

(1) Wasting of thigh muscles by 2 cm.

(2) Knee flexion is possible upto 90 - 100^0 and crepitus is heard on movements.

(3) X-ray taken on 17.12.1998 shows malunion of the femoral fracture with 5 - 100 posterior angulation.

(4) Thigh segment is ¾ on short than the right side.

Patient is not able to squat, is having limping and is not able to walk speedily. He came for dressing of the wound in the hospital. The percentage of disability assessed come to Thirty five with respect to whole body.

We see no ground to take a different assessment regarding

disability though the disability assessed by the specialist doctor. It is contended by the claimant that he was a bus driver by profession. In view of these injuries, he cannot drive even a small or heavy vehicle any more. He will not be able to get any job especially considering the job opportunities in Kerala. Therefore, there is 100% loss of earning capacity. But tribunal had taken only 20% without any material. We are of the opinion that atleast compensation ought have been awarded for 35% disability.

3. With regard to the income, it was proved that he was a bus driver with licence and badge to drive heavy passenger vehicle. He produced two certificates stating that for 15 days he was driving bus bearing registration No.KEF-3083 and for another 15 days, he was driving bus bearing registration No.KLI-5805. But those certificates were disbelieved as the persons who issued the certificate were not examined. Only one person was examined. According to him, his daily income was Rs.150/- per day. Even if those certificates were disbelieved since he was a heavy passenger vehicle driver,

there is nothing wrong in assuming that he will be getting more than Rs.100/- per day and he will be getting 25 to 26 days work in a month. Therefore monthly income can be fixed at Rs.2,500/- per month. Since he is aged 25, taking guidelines from the 2nd schedule tribunal has taken 18 as the multiplier. Even though it was argued that considering the increase in expectancy of age and rate of interest, higher multiplier is taken, we see no reason to enhance the multiplier of 18. Therefore compensation for disability will be Rs.2500 x 12 x 18 x $^{35}/_{100}$ = Rs.1,89,000/-. Tribunal has awarded only Rs.43,200/-. So the additional compensation payable for disability and loss of earning power will be Rs.1,45,800/-. Medical bills for Rs.28,000/- was granted by the tribunal as medical bills to that amount only was produced. It is the case of the claimant that several medical bills were lost. We also note that during long inpatient treatment of 219 days and outpatient treatment extending for years, there will be money expenses that are covered by the bills also. He has an unheeled wound which needs continuous dressing and help. Hence we are of the opinion that another

Rs.10,000/- should be awarded for the medical expenses and for future treatment expenses to be incurred. He was in the hospital for 219 days and therefore an assistant is necessary. Tribunal has awarded Rs.2,000/- for bystander expenses. We award Rs.1,000/- more on that count. It is submitted that only Rs.1,000/- was awarded for disfiguration but considering the compensation awarded for disability and its consequences we are of the opinion that no enhancement is needed for disfiguration. Even though it is argued that compensation awarded for pain and sufferings and various other heads are very low, considering the total compensation payable and interest therein, we are of the opinion that no enhancement is necessary for compensation under other heads. Hence total additional compensation payable will be Rs.1,56,800/- over and above the decreed amount by the tribunal. The above amount should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till its deposit. Out of the above amount, Rs.1 lakh should be disbursed to the claimant and balance should be deposited in a nationalised bank for five years and periodical interest, if

necessary, can be withdrawn by the claimant. Appeal is accordingly partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.550 OF 2000 ()

J U D G M E N T

30th October, 2007